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THE STATE OF NEW HAMPSHIRE

83-56-Z

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THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

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April 21, 1983

Martha A. Ginty, M.Ed., R.N.
Executive Director
Board of Nursing Education and
Nurse Registration
105 Loudon Road
Concord, New Hampshire 03301

Dear Mrs. Ginty:

By letter dated March 16, 1983, you have asked for our opinion whether RSA 326-B (Registered Nurses and Practical Nurses) requires that a Licensed Practical Nurse (LPN) be within "close physical proximity" to a Registered Nurse (RN) in order to be "under his/her direction." Your inquiry is specifically directed to whether a summer camp which employs an LPN must also have an RN in residence. Our opinion is that neither RSA 326-B nor the Rules and Regulations Pertaining to Nurse Licensure et al. require such a practice.

The answer to your inquiry requires analysis of the terms "directing" or "direction" and their relationship to the term "supervision" as used in the statute and the regulations.

The specific question you raise involves analysis of the statutory provision which outlines the duties and functions of an LPN:

"Practical Nursing" means the performance for compensation of selected services in the observation and care of the ill, injured or infirm, and in carrying out the activities and procedures to safeguard life and health



which are prescribed by and performed under the direction of a physician...or registered professional nurse licensed in New Hampshire. RSA 326-B:2,IV (Supp. 1982) (emphasis added).

RSA 326-B:2,I defines "directing" as "overseeing the performance of those to whom nursing functions are appropriately delegated." The term "in close proximity" is not defined in RSA 326-B. It does appear in the Board's regulations, but in connection with "supervision" rather than "directing":

Supervision: requires that the person supervising is in close enough proximity to the person being supervised to intervene should an emergency occur. Rules and regulations 1-15.

The Board has also indicated in its rules and regulations that "direction" or "directing" are not synonymous with "supervision":

Administration of Anesthesia

A currently licensed registered nurse may legally administer anesthetics under the following conditions:

* * *

c) Administers such anesthesia under the direction of and in the presence of a licensed physician or dentist. Note: "in the presence of" means in the same room, or adjoining room or within the same surgical or obstetrical suite. Rules and regulations, Section V (emphasis added).

Therefore, it is clear that "direction" and "in the presence of" are separate and distinct terms. Without more specificity, the rules promulgated under RSA 326-B cannot be read to imply that an LPN must be within close proximity of an RN in order to perform his/her nursing functions. Accordingly, it is our opinion that an LPN may carry out "procedures to

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safeguard life and health," provided that the LPN's activities are prescribed and directed by a physician or RN, even if the physician or RN are not in residence at the summer camp; even without such "direction," an LPN may perform "selected services" in observing and caring for the ill, injured or infirm.

We note also that the "State of New Hampshire Regulations Governing the Safety and Sanitation of Youth Recreation Camps," promulgated by the Water Supply and Pollution Control Commission, state:

In all camps operated for children who are not normal or at which the total number of persons, including campers, employees, and other administrators is at any time greater than 75, there shall be employed, in residence, at least one of the following:

1. a registered nurse or licensed practical nurse, either of whom shall have, additionally, either camp nurse experience or at least one six-week camping season or other recent training or experience in the assessment of children....

Thus, we conclude that the Board cannot require summer camps to have an RN in residence in order to employ an LPN to perform the duties authorized by statute.

Very truly yours,

James E. Townsend
James E. Townsend
Assistant Attorney General
Division of Legal Counsel

JET/SG/smg

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